REMARKS

This paper is being provided in response to the Office Action, dated May 3, 2007, for the above-referenced application. The Office Action has been carefully considered. Reconsideration and allowance of the subject application, as amended, is respectfully requested.

Claims 1-5, 7, 8, 16-18, 20-22 and 24-28 are pending.

Claims 1-5, 7, 8, 16-18, 20-22 and 24-28 stand rejected.

Claims 1, 18 and 28 have been amended.

Rejection under 35 USC 101:

The Examiner has rejected claim 28 as allegedly being directed to non-statutory subject matter.

Applicant respectfully disagrees with the Examiner's reason for rejecting the claim. However, applicant has elected to amend claim 28 to recite that the computer product provided on a computer readable medium is loaded into a computer and the computer executes the claimed steps. Thus, the computer system is converted into a device when loaded with the computer product for performing the recited claim steps.

For the amendments made to the claim, applicant submits that the reason for the rejection has been overcome and respectfully requests that the rejection be withdrawn.

Rejection under 35 USC 103

The Examiner has rejected claimed 1-5, 7, 8, 16, 18, 20-22, 24-26 and 28 under 35 USC 103(a) as being unpatentable over Colby (USP no. 6,449,647) in further view of Chiou (USP no. 6,792,507). The Examiner refers to col. 2, lines 65-col. 3, line 9; col. 9, lines 5-40 and col. 11, lines 28-67 for teaching the claim element "allocation ob bandwidth ... based on an estimate of the data to be copied and a known time period in which to copy said data," and col. 9, lines 5-24 for teaching the claim element "monitoring network traffic characteristics during the data transfer."

Applicant respectfully disagrees with the Examiner's reason for rejecting the claims as Colby fails to disclose either of these elements. However, the independent claims have been

amended to recite that "traffic performance characteristics" are monitored during the data transfer. Support for the amendment may be found at least on page 57, line 1.

Notwithstanding the amendment made to the independent claims with regard to the allocation of bandwidth based on an estimate of the data to be copied and the time period in which to copy said data, a review of col. 9, lines 5-40, Colby teaches using a content-type or filename to determine transmission parameters based on a desired Quality of Service (QoS). (see for example, col. 9, lines 24-28, "[i]dentifying the nature of the requested content also involves **deducing**, from the content request and information stored in the CDS, the QoS requirements of the requested content. These ... requirements include Bandwidth ... Delay.") Colby further teaches that the parameters may be deduced from Table 1, wherein a QoS of "1" represents Internet Phone and requires a minimum bandwidth of 8 KBPS and a QoS of "3" represents media distribution and requires a minimum bandwidth of 0-16Mbps. Parameters for other QoS class are also represented in Table 1.

Table 1 further teaches the end-to-end delay that is required for a corresponding level of service.

Accordingly, from the example shown in Table 1, Colby, thus, determines a minimum bandwidth that is to be used to achieve a desired level of service for the different types of content to be transmitted.

However, Colby fails to teach determining a bandwidth based on an estimate of the data to be copied and the time period in which to copy the data as recited in the claims. Rather, Colby fails to disclose an estimate of the data or a time period in which the data is to be copied. For example, Colby discloses establishing an Internet Phone link with a minimum of 8KBPS independent of the amount of data to be copied or the time period in which the data is to be copied.

Furthermore, with regard to the claim element "monitoring network traffic characteristics during the data transfer, a review of col. 9, lines 5-24, reveals that Colby disclose determining a degree to which the content is considered "hot" by monitoring the number of hits (requests) the content receives.

However, the reference to "hot" content is associated with the number of request that the content receives and is not associated with the monitoring of traffic performance characteristics

even if the "hits" occur during the data transfer. Rather, the number of hits is associated with the requests made to access the content and not the traffic performance characteristics occurring during data transmission.

Thus, Colby at least fails to teach monitoring traffic performance characteristics network as is recited in the claims.

Chiou fails to provide any teaching to correct the deficiency found to exist in the teaching of Colby. Hence, even if the teachings of Colby and Chiou were combined, the combination would not disclose each of the elements recited in the independent claims.

For at least this reason, applicant submits that the invention claimed is not rendered obvious over Colby and Chiou and respectfully requests that the rejection be withdrawn.

With regard to the remaining claims, which ultimately depend from the independent claims, these claims are also allowable by virtue of their dependency from an allowable base.

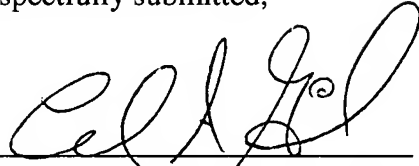Applicant respectfully requests that the rejection of these claims be withdrawn.

In view of the foregoing, the applicant believes that the application is in condition for allowance and respectfully request favorable reconsideration.

In the event the Examiner deems personal contact desirable in the disposition of this matter, the Examiner is invited to call the undersigned attorney.

Please charge all fees occasioned by this submission to Deposit Account No. 05-0889.

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Respectfully submitted,

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